IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 995 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M.S. CHRISTIAN

Versus

RATAN SALES CORPORATION

Appearance:

1. Criminal Appeal No. 995 of 1993

MR MG NAGARKAR for Petitioner No. 1

MR SN SHELAT for Petitioner No. 1

MR DK MODI for Respondent No. 1

MR MD MODI for Respondent No. 1

..... for Respondent No. 2

MR SJ DAVE, APP for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/02/2003

ORAL JUDGEMENT

This is an appeal under special leave granted under Subsection 4 of Section 378 of the Code of Criminal Procedure, 1973 (for short, "the Code") challenging the judgment and acquittal order dated 02/05/91 recorded by the learned Metropolitan Magistrate, Court No. 8, Ahmedabad City, in Criminal Case No. 1526 of 1988 acquitting the present two respondents, being respondent nos. 1 and 2 for offences punishable under Section 16 of the Prevention of Food Adulteration Act, 1954.

2. As per the case of the appellant - original complainant - the complainant had visited the shop of the first respondent on 21/07/87 at 6.00 PM in Ahmedabad City. That the appellant undertook necessary process and introduced himself as a Food Inspector, appointed by the Municipal Corporation of the City of Ahmedabad. Thereafter, the appellant disclosed that he intended to purchase a sample of groundnut oil for being chemically analyzed. Ultimately, the appellant collected sample in a tumbler and according to the case of the complainant the appellant, the sample was divided into three parts and all the three parts were properly packed and sealed in accordance with the Rules. That, thereafter, they were referred to Local Health Authority and one of the parts was sent for chemical analysis. Ultimately, a report was received from the said Analyzer and after following due process of law, complaint was prepared and it was submitted to the Deputy Commissioner, Municipal Corporation, for according sanction under Section 20 of the said Act. After obtaining the sanction, a complaint was filed before the said Court which was registered as Criminal Case No. 1526 of 1988.

3. It seems that the complaint was filed against three accused persons. Accused no. 1 who is the respondent no. 1 before us, was shown as the Retailer. Accused no. 2, who is the respondent no. 2 before us, was shown as the Dealer. Accused no. 3 was shown as the Manufacturer. However, despite efforts, accused no. 3 could not be traced out and therefore, the complaint proceeded against the first two respondents only. The trial court recorded the evidence. After framing the charge and at the conclusion of the evidence, the trial court recorded further statement of the two respondents under Section 313 of the said Code. After hearing the arguments, the trial court found that the complainant - the appellant had failed to bring home charge to the respondents and therefore, the trial court recorded the judgment of acquittal.

4. This has led to the filing of the present appeal by special leave. It has been contended here that the trial court has ignored the fact that the first respondent had failed to prove that the oil tin from which the sample was collected, was purchased by him from the second respondent. That the trial court has also not properly considered the fact that the second respondent had failed to prove that the said oil tin was purchased by the second respondent, from the third accused. That the trial court has also committed error in not convicting the second respondent. That on the whole, the judgment and acquittal order of the trial court are illegal and erroneous and deserve to be set aside.

5. It is, therefore, prayed that the present appeal be allowed and the two respondents be convicted for an offence punishable under Section 16 of the said Act.

6. On receiving the appeal, it was admitted and notice of admission was served upon the respondents. In response to the service of notice of admission, Mr.D K Modi has appeared for respondent no. 1, none has appeared for respondent no. 2 and Mr.S J Dave, learned APP has appeared on behalf of respondent no. 3 - the State of Gujarat. I have heard the learned advocate for the parties and they have taken me through the judgment of the trial court and the evidence on record.

7. It was a contention before the trial court that the sanction has been accorded by Mr.R Banerjee, who happened to be the Dy. Commissioner of Municipal Corporation at the relevant point of time. However, as per the case of the contesting respondents, there is no material to show that Mr.R Banerjee was legally authorized to accord sanction, for the prosecution in question. It is, therefore, contended by the contesting respondent that when sanction is not found to be 'legal', then the Court could not take cognizance of the offence and consequently the entire trial would stand vitiated, for want of proof of a legal sanction.

8. In order to appreciate the aforesaid contention raised on behalf of the contesting respondent, it would be necessary to refer to the provisions made in Section 20 of the said Act. It can be referred for ready reference as follows;

20 : "Cognizance and trial of offences. - (1) [No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14-A] shall be instituted except by, or with the

written consent of, [the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government].

Provided that a prosecution for an offence under this Act may be instituted by a purchaser [or recognised consumer association] referred to in Section 12, if he [or it] produces in court a copy of the report of the public analyst along with the complaint.

[(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 92 of 1974), an offence punishable under sub-section (1-AA) of Section 16 shall be cognizable and non-bailable.]"

9. On an analysis of Section 20 of the said Act, it becomes clear that no offence punishable under Section 16 of the said Act can be instituted, except by or with the written consent of the Central Government or the State Government or a person authorized by general or special order of the Central Government or the State Government.

10. This would mean that before a prosecution could be launched for an offence punishable under Section 16 of the said Act, a valid consent of an authorized officer is required. In the present case, we find that the sanction has been accorded by Mr.R Banerjee, who happens to be the Dy. Commissioner of Municipal Corporation of the City of Ahmedabad. The said sanction has been produced as accorded below the complaint itself.

11. Thus, we can, refer to Ex. 19, which according to the case of the appellant, is an authority authorizing Mr.R Banerjee to accord sanction for the prosecution, of the present respondents. Ex. 19, really speaking, is an order dated 01/08/86 of the Government of Gujarat in General Administration Department stating that Shri R Banerjee is transferred and his services are placed at the disposal of the Urban Development and Urban Housing Department for appointment as Dy. Commissioner, Municipal Corporation, Ahmedabad City.

12. Now, there is no further notification on record,

to show that the said Urban Development and Urban Housing Department of the Government of Gujarat had appointed Mr.R Banerjee as a Dy. Commissioner of the Municipal Corporation of Ahmedabad City.

13. Apart from the said position, let us take it for granted, that Mr.R Banerjee was really appointed as Dy. Commissioner, Municipal Corporation. Then also there is no further evidence on record, to show that the State Government or even the Central Government had appointed Mr.R Banerjee as an Officer to sanction the prosecution of the contesting respondent.

14. When the State Government is authorized to appoint any Officer for a specific purpose, then such appointment can be made, by name or by designation. Therefore, the State Government should have appointed Mr.R Banerjee as an empowered officer for the purpose of carrying out the functions under Section 20 of the said Act. This has not been done or atleast it is not proved on record that Mr.R Banerjee was authorized or appointed by the State of Gujarat or even by the Central Government to discharge the functions as envisaged in Section 20 of the said Act.

15. Sameway, there is no other material on record to show that even by way of appointment as Dy. Commissioner of Municipal Commissioner, for the City of Ahmedabad, he was appointed by designation to be an Officer competent to discharge the functions as envisaged in Section 20 of the said Act.

16. In other words, Mr.Banerjee was not appointed by name or by designation to discharge the functions as contemplated in Section 20 of the said Act. In other words, there was no material on record of the trial court to show that Mr.Banerjee was an authorized officer by the State Government to give consent for prosecuting the contesting respondents. In other words, it is not proved on record that Mr.R Banerji was an authorized officer under Section 20 of the said Act. Consequently, the consent given by him below the complaint cannot be treated to be legal for the purpose of Section 20 of the said Act. Once it is found that the sanction is not found to be legal and valid, then there is a bar against the prosecution of the contesting respondents. The said section has been referred in full text and there is no room for any doubt with respect to the interpretation thereof. In other words, if it is found that the complaint has been filed for an offence punishable under Section 16 of the said Act against an accused person

without a legal consent issued by a competent authorized or empowered officer, then in that case, the prosecution will stand vitiated.

17. In the present case also, it is not proved on record that Mr.R Banerjee was legally competent to give consent for the prosecution of the contesting respondents and consequently, the entire proceeding conducted before the trial court against the contesting respondents would stand vitiated. Once it is found that the proceedings against the second contesting respondent stood vitiated, then in that case, it would not be necessary to further examine other materials on record.

18. It is required to be considered that the Court is exercising powers against a judgment of acquittal against accused persons. When the trial court has acquitted the accused persons and when it is found that the proceeding was not legally instituted and when it is found that the complaint was not filed after following due process of law, then in that view, this Court has no alternative, but to dismiss the appeal and to confirm the judgment and acquittal order recorded by the trial court against the State.

19. In above view of the matter, when the trial was not competent, there is no reason to interfere with the acquittal order, recorded by the trial court and therefore, the appeal must fail.

20. For the foregoing reasons, the present appeal is ordered to be dismissed and the judgment and acquittal order recorded by the trial court are confirmed.

(D. P. Buch, J.)

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